

46 Am. Jur. 2d Judges § 206

American Jurisprudence, Second Edition | February 2022 Update

Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IX. Disqualification to Act in Particular Case

D. Waiver and Estoppel

§ 206. Consent or other actions of parties as effecting waiver or estoppel of disqualification of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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Forms

Forms relating to waiver or estoppel of judge's disqualification, generally, see Am. Jur. Pleading and Practice Forms, Judges [\[Westlaw®\(r\) Search Query\]](#)

Although disqualification may not be waived under some statutes,¹ even with the consent of the parties,² where waiver by consent is allowed, it is generally on the basis of compliance with state statutory or constitutional provisions.³ Such provisions have been interpreted in some states as requiring express consent,⁴ while in others a waiver may be inferred from the actions or inaction of the parties.⁵ The requirements of the governing statute must be followed,⁶ some requiring the consent to be in writing,⁷ although the requirement of a written waiver has been held to be satisfied by an oral stipulation entered in the minutes of the trial court.⁸ The failure to seek recusal of a judge generally is considered implied consent to have the judge go forward in presiding over the case.⁹ Even where implied, the consent must be on the record.¹⁰

Where a judge advises the parties at the beginning of a hearing that the judge knows a claimant and asks if any party has a problem with the judge's presiding over the case, and counsel states that they have no problem, the claimants have waived recusal.¹¹

A party effectively acquiesces to a judge hearing the case when the party brings up the issue of disqualification only after receiving an adverse ruling.¹²

Persons later joined as parties to the action are not bound by an earlier waiver by the original parties to the action.¹³

Where a statute forbids a disqualified judge to sit without the consent of all the parties in interest, all of the parties must consent.¹⁴

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Footnotes

- 1 § 199.
- 2 *Gamez v. State*, 737 S.W.2d 315 (Tex. Crim. App. 1987).
- 3 *State v. Osloond*, 60 Wash. App. 584, 805 P.2d 263 (Div. 1 1991).
- 4 *McGovern v. Mitchell*, 78 Conn. 536, 63 A. 433 (1906).
- 5 *Kerr S.S. Co., Inc. v. Westhoff*, 215 N.J. Super. 301, 521 A.2d 1298 (App. Div. 1987).
- 6 *Daniels v. Thomas, Dean & Hoskins, Inc.*, 246 Mont. 125, 804 P.2d 359 (1990).
- 7 *Caminetti v. Pacific Mut. Life Ins. Co. of Cal.*, 22 Cal. 2d 386, 139 P.2d 930 (1943).
- 8 *Sacramento and San Joaquin Drainage Dist. v. Jarvis*, 51 Cal. 2d 799, 336 P.2d 530 (1959).
- 9 *Doe v. Rankin Medical Center*, 195 So. 3d 705 (Miss. 2016).
- 10 *Gulf States Steel Co. v. Christison*, 228 Ala. 622, 154 So. 565 (1934).
- 11 *Corrado v. Hickman*, 113 S.W.3d 319 (Tenn. Ct. App. 2003).
- 12 *Watts v. Watts*, 854 So. 2d 11 (Miss. Ct. App. 2003).
- 13 *City of San Diego v. Andrews*, 195 Cal. 111, 231 P. 726 (1924).
As to who may bring disqualification motion, see §§ 166, 167.
- 14 *Howard v. Warren*, 206 Ga. 838, 59 S.E.2d 503 (1950).

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